

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VOSK INTERNATIONAL CO.,

Plaintiff,

v.

ZAO GRUPPA PREDPRIYATIY OST  
AND ZAO OST AQUA,

Defendants.

Case No. C11-1488RSL

ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT

This matter comes before the Court on a “Motion for Summary Judgment” filed by Intervenor-Defendant Ltd. “Aqua-Life” (“Aqua Life”) (Dkt. # 61). Plaintiff Vosk International Co. (“Vosk”) appeals the U.S. Patent and Trademark Office Trademark Trial and Appeal Board’s (“TTAB”) refusal to grant Vosk’s applications to register three marks. The TTAB sustained Defendants Zao Gruppa Predpriyatij Ost’s and Zao Ost Aqua’s (collectively “Zao”) oppositions to the applications based on their allegations of prior use and their contention that use of Vosk’s marks on the identified goods were likely to cause confusion.

In addition to seeking review of the TTAB’s decision, Vosk asserts claims of false designation of origin under the Lanham Act and unfair competition under the Washington Consumer Protection Act (“CPA”). Aqua-Life, the successor-in-interest to Zao’s business and the owner of the three marks at issue, intervened and asserts various

1 trademark and unfair competition claims. Aqua-Life now seeks summary judgment  
2 affirming the TTAB's decision and dismissing Vosk's additional claims.

3 Having considered the parties' memoranda, supporting documents, the arguments  
4 made during the hearing on September 27, 2013, and the remainder of the record, the  
5 Court finds as follows:

### 6 I. BACKGROUND

7 In March 2004, Zao, a now dissolved Russian beverage manufacturing and  
8 distribution company, and Vosk, a Washington beverage importer and distributor,  
9 entered into a contract, the terms of which provided that Zao would ship its beverages,  
10 DUCHESSE, ESTRAGON, and EXTRA CIDER with labels shown below, to Vosk and  
11 Vosk would import Zao's products and sell them in the United States. Dkt. # 66 at 3;



19 Dkt. # 1-2 at 3.

20 The parties' original agreement was revised and superseded by another  
21 agreement in September 2004. Dkt. # 66 at 3; Dkt. # 1-2 at 3. By spring 2005, the  
22 parties' relationship had soured and they terminated the contract. Dkt. # 1-2 at 37.

23 In September 2004, Vosk filed applications to register the following three marks:  
24  
25



Dkt. # 66-4 at 2-3; Dkt. # 66-5 at 2-3; Dkt. # 66-6 at 2-3; Dkt. # 1-2 at 2. Zao opposed the registration of Vosk's marks based on a likelihood of confusion. Dkt. # 1-2 at 2. In March 2005, Zao filed trademark applications to register its marks. *Id.* at 37-38.

In 2010, while Vosk's applications were pending before the TTAB,<sup>1</sup> Zao dissolved and assigned its common law rights to the marks to its successor-in-interest, Aqua-Life. Dkt. # 66-11 at 6; Dkt. # 62-7 at 1-3. The TTAB sustained Zao's oppositions and refused to register Vosk's marks in August 2011. Dkt. # 1-2. Nearly two years later, Aqua-Life recorded the assignment of trademarks from Zao with the U.S. Patent and Trademark Office ("PTO"). Dkt. # 62-7 at 1-2.

## II. DISCUSSION

### A. Summary Judgment

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, the records show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to designate, by affidavits, depositions, answers

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<sup>1</sup> Zao's applications were conditionally denied due to Vosk's earlier applications for registration. Dkt. # 1-2 at 37.

1 to interrogatories, or admissions on file, “specific facts showing that there is a genuine  
2 issue for trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

3 All reasonable inferences supported by the evidence are to be drawn in favor of  
4 the nonmoving party. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061  
5 (9th Cir. 2002). “[I]f a rational trier of fact might resolve the issues in favor of the  
6 nonmoving party, summary judgment must be denied.” T.W. Elec. Serv., Inc. v. Pacific  
7 Elec. Contractors Ass’n, 809 F.2d 626, 631 (9th Cir. 1987). “The mere existence of a  
8 scintilla of evidence in support of the non-moving party’s position is not sufficient.”  
9 Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995). “[S]ummary  
10 judgment should be granted where the nonmoving party fails to offer evidence from  
11 which a reasonable jury could return a verdict in its favor.” Id.

#### 11 **B. Standard of Review**

12 Under the Lanham Act, an applicant for registration of a mark that is dissatisfied  
13 with a final decision by the TTAB may seek review of that decision by the Federal  
14 Circuit on a closed record of the TTAB proceedings, 15 U.S.C. § 1071(a)(4), or it may  
15 seek review by the district court with an opportunity to present additional evidence and  
16 raise additional claims, 15 U.S.C. § 1071(b)(1). In the latter situation, the district court  
17 acts as an appellate reviewer of the facts determined by the TTAB and a fact-finder  
18 based on new evidence introduced. 3 J. Thomas McCarthy, McCarthy on Trademarks  
19 and Unfair Competition § 21:20 (4th ed.).

20 In Dickinson v. Zurko, the Supreme Court held that the Administrative Procedure  
21 Act’s standards governing judicial review applies to the Federal Circuit’s review of  
22 findings of fact by the PTO. 527 U.S. 150, 165 (1999). Applying Zurko, the Federal  
23 Circuit determined that the TTAB’s findings of fact “will be upheld unless they are  
24 unsupported by substantial evidence.” On-Line Careline, Inc. v. Am. Online, Inc., 229

1 F.3d 1080, 1085 (Fed. Cir. 2000). This standard of review is applied regardless of  
2 whether review is sought in the Federal Circuit or in the district court. CAE, Inc. v.  
3 Clean Air Eng'g, Inc., 267 F.3d 660, 675 n.9 (7th Cir. 2001); 3 McCarthy § 21:22.50.

4 To apply the substantial evidence standard, the Court must ask “whether a  
5 reasonable person might find that the evidentiary record supports the agency’s  
6 conclusion.” On-Line Careline, Inc., 229 F.3d at 1085. “Substantial evidence is more  
7 than a mere scintilla. It means such relevant evidence as a reasonable mind might  
8 accept as adequate to support a conclusion.” In re Gartside, 203 F.3d 1305, 1312 (Fed.  
9 Cir. 2000). When this standard of review is applied in the context of a motion for  
10 summary judgment, the district court applies a deferential standard of review to the  
11 TTAB’s findings and views new evidence in the light most favorable to the nonmoving  
12 party. Bd. of Regents of Univ. of Wis. Sys. v. Phoenix Int’l Software, Inc., 653 F.3d  
13 448, 452 (7th Cir. 2011). Thus, Vosk, as the non-moving party, must identify  
14 compelling facts that were not brought to the TTAB’s attention that are enough when  
viewed in the light most favorable to defeat summary judgment. Id.

15 Unlike the TTAB’s findings of fact, its conclusions of law are reviewed de novo.  
16 In re Pacer Tech., 338 F.3d 1348, 1349 (Fed. Cir. 2003).

### 17 **C. Vosk’s Motions to Strike**

18 As a preliminary matter, Vosk asks the Court to strike the declaration of Tatiana  
19 Aparshina and the exhibits attached, dkt. # 65 at 25, as well as the declaration of Melvin  
20 Simburg and exhibits, dkt. # 75 at 1. Vosk contends that Aqua-Life did not disclose Ms.  
21 Aparshina as a potential witness and therefore, the Court should strike her declaration  
22 under Rule 37 of the Federal Rules of Civil Procedure. Dkt. # 65 at 25-26. Aqua-Life  
23 does not dispute that it did not disclose Ms. Aparshina as a witness, but instead argues  
24 that her declaration summarizes documents previously introduced during the TTAB

1 proceedings and it does not have the burden of proof to establish facts contrary to the  
2 TTAB's findings. Dkt. # 71 at 14.

3 The Court DENIES the motion to strike Ms. Aparshina's declaration as  
4 essentially moot because the Court does not rely on her declaration for its ruling.  
5 Rather, the Court relies entirely on the undisputed facts and the unchallenged findings of  
6 fact by the TTAB. Vosk's arguments regarding the documents attached to Ms.  
7 Aparshina's declaration are equally unavailing. At summary judgment stage, "a party  
8 does not necessarily have to produce evidence in a form that would be admissible at  
9 trial." Block v. City of L.A., 253 F.3d 410, 418-19 (9th Cir. 2001). A party need only  
10 present evidence that can "be presented in a form that would be admissible in evidence."  
11 Fed. R. Civ. P. 56(c)(2). The Court finds that the exhibits attached to Ms. Aparshina's  
12 declaration could be properly authenticated at trial and therefore, has considered it.

13 The Court also DENIES the motion to strike Mr. Simburg's declaration and the  
14 exhibits attached as moot for the same reason it denies Vosk's motion to strike Ms.  
15 Aparshina's declaration. The Court does not rely on this declaration or the exhibits  
16 attached to it in reaching its decision.<sup>2</sup>

#### 17 **D. Findings of the TTAB**

18 During the TTAB proceedings, Zao presented evidence consisting of business  
19 records and testimony that it exported beverages with its marks to the United States as  
20 early as 2001. Dkt. # 2-1 at 35. Edward Tkach, President of B & B International  
21 Connections, Inc., testified that he and his company began importing these products  
22 with the marks in 2001 and they continued importing Zao's products until 2004. Id. at  
23 36. Then, in March 2004, Zao and Vosk entered into an agreement, which was later  
24 modified and superseded by another agreement in September 2004, the terms of which

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25 <sup>2</sup> The Court also has not considered the late submissions by Aqua-Life, filed the day  
26 before the hearing on this motion. Dkt. # 92, 93.

provided that Vosk would purchase Zao's products and re-sell them in the United States. Id. at 36. During the course of their relationship, Vosk worked with Zao to alter the labels to include the English translations and to make a few other minor alterations to comply with U.S. law. Id. at 36-37. As the TTAB noted, "these are the types of labeling changes one might expect an importer or distributor to recommend to its foreign manufacturer based on its better understanding the law and custom of the domestic market." Id. at 37 n.41. The parties ceased working together in spring 2005. Id.

### **E. TTAB's Conclusions of Law<sup>3</sup>**

Based on the findings set forth above, the TTAB concluded that Zao "clearly established [its] priority of use of the marks in connection with the involved goods." Id. at 45. This Court agrees. Affording the proper deference to the TTAB's factual findings, the Court finds that the evidence shows that Zao had a proprietary interest in the subject marks several years before Vosk filed its intent to use applications in September 2004. Furthermore, Vosk does not dispute that Zao distributed its products containing the relevant marks in the United States before Vosk filed its intent to use applications. Rather, as explained below, Vosk argues that Zao's distribution was unlawful, thereby invalidating Zao's priority date.

As before the TTAB, there does not appear to be any dispute that the parties' marks present a likelihood of confusion. See Dkt. # 2-1 at 46; Dkt. # 61; Dkt. # 65. Nonetheless, analyzing the factors established in AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979), (1) strength of the mark; (2) proximity or relatedness

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<sup>3</sup> Despite Vosk's request to do so, the Court may not review the TTAB's denial of Vosk's motion for summary judgment. "An order denying a motion for summary judgment is interlocutory, non-final, and non-appealable." Parker Bros. v. Tuxedo Monopoly, Inc., 757 F.2d 254, 255 (Fed. Cir. 1985); accord Tequila Centinela, S.A. de C.V. v. Bacardi & Co. Ltd., 517 F.Supp.2d 1, 7-8 (D.D.C. 2007). That rule is applicable to decisions by the TTAB. Parker Bros., 757 F.2d at 255. Therefore, the Court does not consider Vosk's claims on review that the TTAB erred in denying its motion for summary judgment.



1 of the goods or services; (3) similarity of sight, sound and meaning; (4) evidence of  
2 actual confusion; (5) marketing channels; (6) type of goods and purchaser care; (7)  
3 intent; and (8) likelihood of expansion in product lines, the Court affirms the TTAB's  
4 finding of a likelihood of confusion. See Brookfield Commc'ns, Inc. v. West Coast  
5 Entm't Corp., 174 F.3d 1036, 1053-54 (9th Cir. 1999) ("Some factors are much more  
6 important than others, and the relative importance of each individual factor will be case  
7 specific . . . it is often possible to reach a conclusion with respect to likelihood of  
8 confusion after considering only a subset of factors.").

9 The Court finds that the subject marks are essentially identical. They are  
10 comprised of the same words, written in the same font, surrounded by virtually the same  
11 shapes in the same design. The similarity factor therefore weighs heavily in favor of a  
12 finding of likelihood of confusion. Id. at 1054 ("The similarity of the marks will always  
13 be an important factor."). In addition, both Aqua-Life and Zao's marks are used to label  
14 the same type of non-alcoholic, Russian beverages. See Dkt. # 1-2 at 52-53. Based on  
15 the nearly identical nature of the marks and their use for the same products in the same  
16 market, the Court concludes that there is a likelihood of confusion. Brookfield, 174  
17 F.3d at 1056 ("In light of the virtual identity of marks, if they were used with identical  
18 products or services likelihood of confusion would follow as a matter of course.").

19 Finally, the TTAB considered and rejected Vosk's argument that Zao could not  
20 establish trademark rights because it did not comply with the Food and Drug  
21 Administration's ("FDA") labeling requirements and its Estragon beverage contained an  
22 ingredient prohibit by the FDA. Dkt. # 1-2 at 54- 62. Although Vosk alleged that Zao  
23 violated a variety of FDA requirements before 2004, Vosk did not present any evidence  
24 that the FDA or any other authority actually determined there to be a violation before  
25 2004. Dkt. # 2-1 at 60-61. Absent any finding by the TTAB that the FDA determined



1 Zao to be noncompliant before September 2004, the Court affirms the TTAB's denial of  
2 Vosk's affirmative defense.

3 The Ninth Circuit's holding in CreAgri, Inc. v. USANA Health Scis., Inc., 474  
4 F.3d 626 (9th Cir. 2007) does not alter the Court's analysis. Unlike the circumstances  
5 present here, in CreAgri, Inc., it was undisputed that the manufacturer's labels were not  
6 in compliance with U.S. regulations governing labeling requirements regarding the  
7 ingredients of a dietary supplement and therefore, the manufacturer's use was not lawful  
8 for determining priority of use. 474 F.3d at 630-31. In contrast, Vosk failed to present  
9 any evidence that Zao's use of its marks before September 2004 was in fact unlawful.  
10 Absent such evidence, this Court cannot conclude that the alleged labeling defects were  
11 sufficiently related to the marks to justify revoking Aqua-Life's common-law rights to  
12 the marks. The Court also affirms the TTAB's finding that abrogating Zao's rights, and  
13 now Aqua-Life's rights, to the marks based on unsupported allegations of labeling  
14 defects would not reflect the PTO's longstanding policy favoring proportionate  
15 penalties. See Dkt. # 1-2 at 61-62.

#### 15 **F. New Evidence and Arguments**

16 In this appeal, Vosk presents evidence and arguments not considered by the  
17 TTAB. At this stage, the primary inquiry is whether Vosk has presented sufficient  
18 evidence that, when viewed in the light most favorable to Vosk and considered with the  
19 TTAB's findings of fact, creates a genuine issue of material fact precluding summary  
20 judgment in Aqua-Life's favor. Phoenix Int'l Software, Inc., 653 F.3d at 452. Vosk  
21 contends that three genuine issues of fact preclude granting Aqua-Life's motion: (1)  
22 whether Zao's trademark assignment to Aqua-Life is authentic; (2) whether Zao's prior  
23 use of the marks was lawful; and (3) whether Vosk was Zao's distributor or the actual  
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25

1 owner of the subject marks. Dkt. # 65 at 13-25. The Court addresses each of Vosk's  
2 arguments in turn.

3 **1. Zao's Assignment of Rights to Aqua-Life**

4 Vosk argues that Aqua-Life and Zao backdated the trademark assignment to  
5 reflect a date preceding Zao's dissolution to avoid a finding that the relevant marks had  
6 been abandoned. Dkt. # 62-7 at 13. To support this contention, Vosk relies on the two-  
7 year delay in recording the assignment with the PTO and Zao's alleged history of  
8 committing forgery by reproducing the signature of Vosk's owner on four documents.  
9 Id. at 13-15. These arguments are not persuasive.

10 Contrary to Vosk's suggestion, Aqua-Life was not required to join or seek  
11 substitution in the TTAB proceedings. A TTAB decision is binding on an assignee  
12 regardless of whether there is a formal substitution of the party during the TTAB  
13 proceedings. TBMP 512.01; see also Hamilton Burr Publ'g Co. v. E. W. Communc'ns,  
14 Inc., 216 U.S.P.Q. 802, 803, n.1 (TTAB 1982) (noting that if the entity opposing to the  
15 registration of a mark has transferred its rights to the mark, the assignor may continue  
16 the action and the TTAB's decision will be binding upon the assignee). Furthermore,  
17 even if Zao reproduced Mr. Voskanyan's signatures on drafts of the parties' contracts  
18 without authorization, that fact alone is insufficient to create a genuine issue of fact  
19 regarding whether the signatures and the date on a separate document are authentic.<sup>4</sup>  
20 Vosk has not presented any evidence suggesting that the assignment of rights is not  
21 authentic.  
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23 <sup>4</sup> The Court notes that whether Mr. Voskanyan's signatures on the contract drafts are  
24 replicas is not a genuine issue of material fact precluding summary judgment as neither party  
25 disputes the material terms of the contracts.

## 2. Zao's Alleged Unlawful Prior Use

Vosk next contends that Zao's prior use of the marks was not lawful use in commerce and therefore, Aqua-Life cannot establish priority of use of the marks. Although Vosk presented similar arguments during the TTAB proceeding, dkt. # 1-2 at 54, Vosk has submitted new evidence in this appeal, which requires this Court to review the evidence de novo and in the light most favorable to Vosk. Phoenix Int'l Software, Inc., 653 F.3d at 452.

Vosk argues that Zao's earlier use of the mark associated with one beverage, Estragon, was not lawful because it contained a color additive prohibited by the FDA.<sup>5</sup> Vosk relies on the FDA's 2005 determination that one shipment of Estragon contained Patent Blue V in violation of 21 U.S.C. § 379e(a). Dkt. # 66-7. Vosk's new evidence includes a spreadsheet Vosk received through a records request from the FDA pursuant to the Freedom of Information Act. Dkt. # 66 ¶ 21; Dkt. # 68-1. This spreadsheet states that the FDA found an unspecified color additive in Estragon in 2008 that is considered "unsafe" and prohibited by a federal regulation. Id. at 5. Vosk also relies on expert testimony from Irene Gomez, a former FDA Director of Import Operations for Los Angeles, California. Dkt. # 68. Viewing the new evidence in the light most favorable to Vosk, the Court finds that Vosk fails to present a genuine issue of material fact regarding the legality of Zao's prior use of the marks.

The reliability of expert testimony is judged not on the substance of the opinions offered, but on the methods employed in developing those opinions. Daubert v. Merrill Dow. Pharm., Inc., 509 U.S. 579, 594-95 (1993). In general, the expert's opinion must be based on principles, techniques, or theories that are generally accepted in his or her

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<sup>5</sup> There is no allegation or evidence that Zao's two other products, Duchesse, and Extra Cider, contained any unlawful ingredient or that their importation was questioned by a federal authority.

1 profession and must reflect something more than subjective belief and/or unsupported  
2 speculation. Id. at 590. The testimony must also be “helpful,” such that a valid  
3 connection between the opinion offered and the issues of the case exists. Id. at 591-92.

4 Based on the FDA’s determination that Patent Blue V was present in one  
5 shipment of Estragon in 2005 and the FDA’s finding that an unsafe color additive was  
6 present in Estragon 2008, Ms. Gomez opines that all of Zao’s shipments of Estragon  
7 through 2008 contained Patent Blue V. Dkt. # 68 ¶ 9. This opinion is based on a  
8 another opinion that “manufacturers typically do not formulate products that initially  
9 comply with FDA regulations and then reformulate such products in a way that violates  
10 such regulations.” Id. Although Ms. Gomez has more than thirty years of experience in  
11 FDA import operations and procedures, she lacks sufficient knowledge or experience to  
12 qualify as an expert in the proper subject matter. Ms. Gomez is not and does not  
13 proclaim to be an expert in the field of beverage manufacturing and her opinions are  
beyond the scope of her FDA import expertise.

14 Additionally, Ms. Gomez’s opinion is not the product of reliable principles or  
15 methods. It is not entirely clear what, if anything, Ms. Gomez relied on to reach her  
16 conclusion. Even assuming that the color additive found in Estragon in 2008 was in fact  
17 Patent Blue V, there is nothing in the record or her opinion that suggests its presence in  
18 Estragon before 2005. There is simply too large an analytical gap between the facts and  
19 her conclusion that all shipments of Estragon before 2005 contained Patent Blue V.

20 With respect to Zao’s alleged failure to comply with FDA labeling requirements  
21 in 2008, Ms. Gomez’s opinion regarding Zao’s use of Russian writing on its labels is not  
22 helpful to the trier of fact as required under Daubert. Ms. Gomez opines generally that  
23 if Zao’s imported beverages contained labels written in Russian those beverages did not  
24 lawfully enter U.S. commerce. Dkt. # 68 ¶ 11. Ms. Gomez relies on the same FDA  
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1 spreadsheet discussed earlier, which also indicates that in 2008, Zao attempted to import  
2 beverages containing labels that did not comply with certain FDA regulations, including  
3 one regulation requiring that labels be written in English. Id. ¶ 7; Dkt. # 68-1. Her  
4 conclusion that labels written in Russian violate FDA regulations provides no additional  
5 insight beyond the document on which she relies. Furthermore, neither Ms. Gomez's  
6 opinion nor the FDA spreadsheet addresses the relevant time period, before September  
7 2004. Id. At best, this evidence indicates that Zao's labels were not compliant long  
8 after Vosk's priority date. Vosk therefore fails to present sufficient admissible evidence  
9 to create a genuine issue of material fact regarding whether Zao's prior use of the marks  
10 in commerce was lawful.<sup>6</sup>

### 11 **3. Vosk's Business Relationship with Zao**

12 Finally, Vosk contends that whether Vosk was Zao's "distributor" in 2004 and  
13 early 2005 is an issue of material fact precluding summary judgment. Dkt. # 65 at 23.  
14 However, the precise nature of Vosk's relationship with Zao is not material. Vosk does  
15 not dispute that Zao, through another distributor, imported and sold the products with its  
16 marks before 2004. Therefore, whether Vosk acted as Zao's distributor and agent or as  
17 a buyer and subsequent seller and owner of the marks in 2004 and 2005 is irrelevant to  
18 the determination of priority. Vosk does not contend that the marks Zao used before  
19 2004 belonged to Vosk and thus, the dispute regarding ownership of the marks on the  
20 products sold as a result of the parties' contracts is not relevant. The Court therefore  
21 GRANTS Aqua-Life's motion for summary judgment and AFFIRMS the decision of the  
22 TTAB.

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23 <sup>6</sup> Despite Vosk's request to strike Ms. Aparshina's declaration, dkt. # 65 at 25, Vosk  
24 relies on Ms. Aparshina's statements as admissions that Zao's use of the marks was unlawful  
25 before 2004, dkt. # 65 at 23. Vosk cannot have it both ways. As explained more fully above,  
26 the Court has not considered Ms. Aparshina's declaration in reaching its decision.

**G. False Designation of Origin and Unfair Competition**

In its motion, Aqua-Life challenges Vosk's false designation of origin and unfair competition claims. Aqua-Life contends that as the senior user of the three marks at issue, it did not infringe and is not currently infringing on Vosk's rights under the Lanham Act and it has not violated the CPA. Dkt. # 61 at 10-11. Vosk offers nothing in response. In fact, Vosk's response does not even mention these claims. Nonetheless, the Court has conducted its own review of these claims and finds that these claims cannot survive summary judgment in light of its earlier ruling affirming the TTAB's decision. Therefore, the Court GRANTS Aqua-Life's motion with respect to Vosk's false designation of origin and unfair competition claims.

**H. Aqua-Life's Counterclaims.**

During oral argument, Aqua-Life informed the Court that should this Court grant its motion for summary judgment it would dismiss its counterclaims against Vosk. Because the Court has granted Aqua-Life's motion for summary judgment in its entirety, Aqua-Life's counterclaims are hereby DISMISSED.

**III. CONCLUSION**

For all of the foregoing reasons, the Court GRANTS Aqua-Life's motion for summary judgment (Dkt. # 61). The Clerk of the Court is directed to enter judgment in favor of Intervenor-Defendant Aqua-Life and against Plaintiff Vosk.

DATED this 9th day of October, 2013.



Robert S. Lasnik  
United States District Judge